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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1977
No. 77-439

HAROLD EKMANIAN, individually and B & H INGLEWOOD TOW, a corporation,

Petitioners,

vs.

F. RAY MARSHALL, Secretary of Labor, United States Department of Labor,

Respondent.

SUPPLEMENTAL BRIEF ON PETITION FOR CERTIORARI

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Pursuant to the pro visions of Rule 24(5), of Rules of the Supreme Court of the United States, Petitioner Harold Ekmanian, individually and B & H Inglewood Tow, a corporation, respectfully file this Supplemental Brief in support of their application to this Court for a writ of certiorari to review the judgment and decision of the United States Court of Appeals for the Ninth Circuit, filed in this

matter on July 27, 1977.

1. Reason for Filing Supplemental Brief:

In its Memorandum for the Respondent in Opposition to the petition for writ of certiorari, the Respondent has misstated the facts and applied such misstated facts to non-applicable law to result in what is tantamount to a misstatement of law. Not to call this to the attention of the court by means of this supplemental brief - this being matter not available at the time of the filing of the petition - would be a failure of duty to the petitioner and this court.

2. Facts Misstated:

In paragraph 1, on page 2 of Respondent's Memorandum in Opposition it is stated:

> "They thereby keep the interstate roads clear of obstructions and facilitate the free passage of interstate travel. The activities of petitioners' employees in keeping the channels of interstate commerce clear of obstructions are 'so intimately related to interstate commerce "as to be in practice and in legal contemplation a part of it."' Overstreet v. North Shore Corp., 318 U.S. 125, 130." (Underscoring added.)

These statements are untrue. The petitioners here were not designated by the Department of Transportation or the Highway Patrol of the State of California to service any freeway or state highway, this designation in the Inglewood area being held exclusively by another company, Inglewood Service Garage, with whom Petitioners have no connection (R.T. p. 146, lines 8-16). Such other garage attends to any wrecks, blockages or traffic-impeding situation on the freeway that passes through Inglewood, and Petitioners are not authorized so to do.

Petitioner's only contact with freeways is that this small local garage did for a time (no longer) render service for local auto club members at $3.20 per call (garages towing cars from freeways get more than 5 times that sum per call) their cars being pulled over on the right shoulder, out of the traveled portion, through the use of a small pick-up truck, providing gas, battery jumping and changing tires. They do not handle wrecks on the freeway (R.T. p. 146, line 20 through line 12, p. 148).

Next, Respondent compared this small local garage, which is not designated to service freeways or state highways with the situation in the cases of Gray v. Swanney-McDonald, Inc., 436 F.2d 652, certiorari denied, 402 U.S. 995; Brennan v. Keyser, 507 F.2d 472, certiorari denied; Keyser v. Dunlop, 420 U.S. 1004; and Hodgson v. Baker, 544 F.2d 426, certiorari denied; Baker v. Marshall, 430 U.S. 946 with which there is no actual similarity. And on page 3 of Respondent's Memorandum it states:

> "Last spring the Court declined to review Baker, an almost identical case, and there is no greater reason to grant review of the present case." (Underscoring added.)

Again, this statement is an incorrect factual statement.

Aside from many other issues of law there presented, Baker was an official police garage and one designated by the Highway Patrol to service portions of the state highways and freeways passing through his San Fernando Valley area . . . in the city of Los Angeles. Petitioner, herein is not and has not been so designated or authorized to render such service on state highways and freeways.

Swanney-McDonald and Keyser were also official Los Angeles Police garages, designated by the Highway Patrol to service freeways and state highways passing through that portion of the City of Los Angeles that they were authorized to service. Ekmanian and B & H Tow, have never had such designation or authorization.

Counsel for petitioner herein was also counsel in each of the above mentioned cases for the garages involved, i.e., Swanney-McDonald, Keyser, and Baker. The situation and facts in the present case are entirely different and not comparable with such earlier cases.

In the earlier cases, while it was argued that their activities were local in character because their services were confined to internal

roadways (freeways) entirely within the City of Los Angeles, nevertheless, each of such garages in those cases were Official Police garages and designated by the Police Department and the Highway Patrol to remove wrecks, damaged and disabled vehicles from such internal freeways.

The petitioner here performs no such service, has never been designated or authorized as an Official garage by the Police, Highway Patrol, Department of Transportation or otherwise to render such service, and in the small area where he transacts his local business there is an Official garage designated by the Police Department and the Highway Patrol to - and is the only garage authorized to - render such service. Such comparison as undertaken by Respondent therefore is without basis in fact.

Petitioner has nothing to do with keeping channels of interstate commerce clear of obstructions!

Respectfully submitted,

G. G. BAUMEN

Attorney for Petitioner